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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/326,285	06/07/1999	JENNIE BIH-JIEN SHEN	BB-1137	4005

23906 7590 09/06/2002

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
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WILMINGTON, DE 19805

EXAMINER

EINSMANN, JULIET CAROLINE

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 09/06/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/326,285

Applicant(s)

SHEN, JENNIE BIH-JIEN

Examiner

Juliet C Einsmann

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 August 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 23 August 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 172-176.Claim(s) withdrawn from consideration: 1-150, 168-170.

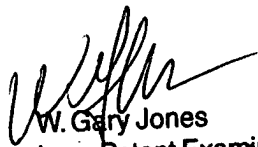
8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

The proposed amendments will overcome some of the concerns raised under 112 2nd paragraph. Namely, the entry of the amendments will overcome all of the 112 2nd paragraph rejections set forth on page 3 of the FINAL office action EXCEPT the rejection concerning the phrase "carcass quality improving amount." This rejection is not overcome by the entry of the after-final amendment.

Applicant sets forth an extensive argument on pages 10-15 which is directed to overcome the 112 1st paragraph and second paragraph rejections. This argument relies heavily on exhibits provided with the arguments. However, these exhibits will not be considered because they are not timely filed. Applicant is referred to CFR 1.195 which states, "Affidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented." In the instant case, Applicant has not provided any reasons as to why the instant exhibits were not presented earlier. Thus, the arguments are not persuasive absent consideration of the exhibits upon which they rely.

Furthermore, it is noted that it appears that Applicant is attempting to rely on the references cited in the arguments as a form of evidence to support the enablement of the instant claims under 112 1st paragraph. To this end, for future prosecution, applicant is reminded that such evidence is generally required in declaration or affidavit form. MPEP 716.02(g) states, "The reason for requiring evidence in declaration or affidavit form is to obtain the assurances that any statements or representations made are correct, as provided by 35 U.S.C. 25 and 18 U.S.C. 1001." Permitting a publication to substitute for expert testimony would circumvent the guarantees built into the statute. *Ex parte Gray*, 10 USPQ2d 1922, 1928 (Bd. Pat. App. & Inter. 1989)."

Thus, although the after-final amendment be entered, the claims remain rejected for the reasons of record, with the exception of the 112 2nd paragraph rejections that are withdrawn.


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Supervisory Patent Examiner
Technology Center 1600